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Less Express Courier Systems and District 6, International Union of Industrial Service, Transport and Health Employees. Case 2–CA–31600

January 31, 2001

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS HURTGEN
AND WALSH

On November 17, 1999, the National Labor Relations Board issued a Decision and Order,¹ *inter alia*, directing the Respondent, Less Express Courier Systems, to make whole employee Kevin Walker for loss of earnings and other benefits resulting from his discharge in violation of the National Labor Relations Act. On April 11, 2000, the United States Court of Appeals for the Second Circuit entered its judgment enforcing in full the Board's Order.²

A controversy having arisen over the amount of backpay due the discriminatee, on July 11, 2000, the Acting Regional Director for Region 2 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification,³ the Respondent failed to file an answer.

By letter dated September 7, 2000, and sent by certified mail, the Region advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by September 21, 2000, summary judgment would be sought.⁴ The Respondent filed no answer.

On December 27, 2000, the Acting General Counsel filed with the Board a motion for summary judgment, with exhibits attached. On December 29, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

¹ 330 NLRB No. 6.

² No. 00-4024 (unpublished).

³ A copy of the compliance specification was served on the Respondent at its place of business by certified mail. This copy was returned to the Regional Office by the Postal Service marked "refused." The Respondent's failure or refusal to accept certified mail cannot defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986). Further, another copy of the compliance specification subsequently was served on the Respondent by regular mail, and a copy of the compliance specification was also served on the Respondent's counsel by regular mail.

⁴ This letter was also returned to the Regional Office, with a Postal Service stamp indicating that the mail was "refused."

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due the discriminatee is as stated in the compliance specification and we will order payment by the Respondent of that amount to the discriminatee, plus interest accrued on that amount to the date of payment.⁵

ORDER

The National Labor Relations Board orders that the Respondent, Less Express Courier Systems, New York, New York, its officers, agents, successors, and assigns, shall make whole Kevin Walker by paying him \$16,447, plus interest as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and minus tax withholdings required by Federal and State laws.

Dated, Washington, D.C. January 31, 2001

John C. Truesdale, Chairman

Peter J. Hurtgen, Member

Dennis P. Walsh, Member

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⁵ The compliance specification sets forth backpay owing to discriminatee Walker through June 15, 2000, and alleges that the backpay period continues to run as the Respondent has not made a valid offer of reinstatement to Walker.